

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

KATHRYN GREEN, ET AL.,)	CASE NO: 4:16-CV-00893
)	
Plaintiffs,)	CIVIL
)	
vs.)	Houston, Texas
)	
HARRIS COUNTY, TEXAS, ET AL.,)	Tuesday, January 10, 2017
)	(10:11 a.m. to 11:21 a.m.)
<u>Defendants.</u>)	

MOTION HEARING

BEFORE THE HONORABLE FRANCES H. STACY,
UNITED STATES MAGISTRATE JUDGE

Appearances:	See Next Page
Court Recorder:	Lauren Webster
Transcriber:	Exceptional Reporting Services, Inc. P.O. Box 18668 Corpus Christi, TX 78480-8668 361 949-2988

Proceedings recorded by electronic sound recording;
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1 Houston, Texas; Tuesday, January 10, 2017; 10:11 a.m.

2 (Call to Order)

3 **THE COURT:** We're having a hearing about you -- *Green*
4 *versus Harris County*, Number H16-893 and while we're working on
5 that, I'd like the lawyers in that case to approach the bench.
6 Everybody else in the courtroom can continue with their work.
7 Try not to pay attention to us and we'll just have our separate
8 hearing up here at the bench.

9 All right. Who are all the attorneys in this case?

10 **MR. KALLINEN:** Randall Kallinen and Charles Peckham
11 for Kathryn Green and David Green and David and Kathryn Green
12 is here.

13 **MR. PECKHAM:** And she's also a member of the Bar.
14 So --

15 **MS. GREEN:** Good morning.

16 **THE COURT:** Good morning.

17 **MS. COUNTISS:** Julie Countiss on behalf of Harris
18 County, Victoria Jimenez on behalf of Harris County and Lisa
19 Hulsey on behalf of Harris County.

20 **MS. HULSEY:** Hello, your Honor.

21 **THE COURT:** How are you all?

22 All right. So we have a couple issues. One of them
23 is a few disagreements about a protective order, correct? And
24 you've maybe been able to work out some of these disagreements?
25 One of them has to do with the information that's already been

1 made public. You know, the Plaintiff doesn't believe this
2 protective ought to apply to that and some of this wording you
3 think makes that information protected?

4 **MR. KALLINEN:** Yes, your Honor, because there's no
5 exception for it and there should at least be an exception for
6 documents that we are already, you know, possess, I mean, that
7 have already been made public and take things from the public
8 that may be confidential that's not.

9 **THE COURT:** Then I suggest that this -- that there be
10 some statement at the beginning or near the beginning of the
11 protective order that makes it clear that the protective order
12 doesn't apply to information that's already been made public.

13 **MS. COUNTISS:** Your Honor, part of the problem is
14 that we aren't necessarily sure what has been made public
15 primarily because throughout the course of this litigation, the
16 Plaintiffs have made numerous public information requests to
17 Harris County entities while also conducting discovery and so
18 we're not yet -- we are not yet certain what they've obtained
19 through a public information request, you know, versus what
20 they might be asking for in discovery.

21 And, you know, furthermore, we did file a motion
22 yesterday addressing this issue and we don't obviously need to
23 get into it today but, you know, just to say that discovery and
24 public information requests are mutually exclusive and just
25 because something may have come from a Harris County entity --

1 if it wasn't -- you know, if it didn't come in the course of
2 this litigation through discovery, we may not know what it is
3 or whether -- or what information is contained in it and, you
4 know, it's our duty to protect some of those folks. Excuse me.

5 (Voices off the record)

6 MS. COUNTISS: Right, right. And it -- let me just
7 add that we have asked for that information in our discovery
8 request to Plaintiffs although we have not received it yet.

9 THE COURT: Well, if you did, you know, kind of
10 clarify that. It might help with the protective order being
11 finalized.

12 MR. KALLINEN: Well, your Honor, Plaintiffs believe
13 that anything that, of course, is public meant -- public under
14 The Texas Public Information Act. The filing of a Federal
15 lawsuit does not make it anymore, you know, secret or subject
16 to nondisclosure. As a matter of fact, the case law that we
17 have found shows that once a case is in Federal hands, it
18 actually promotes that the public, you know, see all the
19 documents and is very open, you know, you be very open to the
20 concept that protects so that anything under The Texas Public
21 Information Act is -- that's a minimum of what should be
22 allowed to be, you know, not under the protective order.

23 And as we point out in our response to Harris
24 County's motion for the entry of the protective order, the case
25 law is squarely against all these concepts of secrecy and so

1 forth and it requires that Harris County or the person saying
2 these -- such and such is in secret, that they come up with the
3 law and so forth based upon Federal law, not State law because
4 both the supremacy clause and the Supreme Court has squarely
5 spoken in 1983 cases that openness is what we need, not, you
6 know, closure. So the case law is squarely for openness and
7 State law, of course, has never trumped Federal law and doesn't
8 in this case.

9 **THE COURT:** So doesn't it seem logical that
10 information that has been made public should not be subject to
11 the protective order?

12 **MS. COUNTISS:** Again, without knowing -- I can't --
13 I'm not going to just --

14 **THE COURT:** Just in theory.

15 **MS. COUNTISS:** I mean, in theory, again, it's hard
16 for me to agree with that because it depends on what it is. I
17 mean, I -- and how it was made --

18 **THE COURT:** Okay. Well, I think that it does not
19 have to be protected by the protective order if the information
20 has been released to the public. You know, that kind of
21 doesn't make sense.

22 Well, I understand that you don't know which
23 information has and has not been released to the public. I
24 understand that problem all right and I'd like the Plaintiff
25 to, you know, clarify that for you. All right -- in this

1 discovery process. Will you do that, Mr. Kallinen?

2 **MR. KALLINEN:** Oh. When we disclose and when we
3 produce, you want us to point out that it was public?

4 **THE COURT:** If it's information that's already been
5 made public and they don't know -- the Defendants don't know
6 that it already has been made public, then will you please
7 specify that to them?

8 **MR. KALLINEN:** Certainly. And would that also apply
9 to anything that would be public under The Texas Public
10 Information Act?

11 **THE COURT:** Like what?

12 **MR. KALLINEN:** Oh, let's say like an autopsy report
13 just as an example. Once there's no law enforcement exception
14 to an autopsy report, it becomes public under the -- you know,
15 under the case law. So the fact that it's a medical record or
16 something -- the fact that even though we haven't received it
17 yet, if it is something that is public under The Texas Public
18 Information Act --

19 **THE COURT:** If you have a dispute about the -- if you
20 have a dispute about whether information is public or not,
21 then, you know, that dispute should be resolved first. Okay.
22 Like you might not necessarily agree an --

23 **MS. COUNTISS:** Right.

24 **THE COURT:** -- autopsy report is public information.

25 **MS. COUNTISS:** Well, I'm not -- I'm actually

1 primarily concerned with, number one, protecting health-related
2 information throughout this litigation, protecting personnel
3 files, particularly of individuals who are not named parties or
4 named Defendants and, you know, that's our larger concern, is
5 protection of information in discovery.

6 **THE COURT:** I'd be surprised if those categories of
7 documents have been made public.

8 **MS. COUNTISS:** Well --

9 **MR. KALLINEN:** Your Honor, even in our suggested
10 protective order, we put in there that people other than the
11 deceased in their public info -- their medical care
12 information, we -- no, we're not going to disseminate that. We
13 need to get it to our experts to show a pattern and practice of
14 bad medical care at the Harris County jail but we're not going
15 to do anything -- you know, things publicly embarrassing, no.
16 And we already put that in the protective order as we did --

17 **THE COURT:** Okay. Well, what other parts of the
18 protective order are you having a problem agreeing on?

19 Beverly, do I have a copy of that?

20 **MR. KALLINEN:** Well, we did set forth our own
21 protective order which --

22 **THE COURT:** Beverly --

23 **MR. KALLINEN:** -- is much shorter and much simpler --

24 (Court conferred with clerk)

25 **THE COURT:** Go ahead.

1 **MR. KALLINEN:** So I'm just trying to get out the
2 particular protective order, your Honor.

3 **MR. PECKHAM:** What we need is some more paper in this
4 case, Judge.

5 **MR. KALLINEN:** Yeah.

6 **MS. COUNTISS:** We've laid out the points for us that
7 appear to be in controversy in Document 19 and we could just
8 march through that.

9 **THE COURT:** Go through -- go ahead.

10 **MS. COUNTISS:** So for -- beginning with protected
11 health information --

12 **MS. HULSEY:** On Electronic Page 3.

13 **MS. COUNTISS:** -- I'm sorry -- Electronic Page 3 in
14 Document 19. I think she's waiting for the document.

15 You know, we're asking for the protective order from
16 the Court to -- that expressly identifies protected health
17 information which must be disclosed in response to Plaintiffs'
18 request prohibiting the use of any protected health information
19 produced by the County, whether produced by agreement or
20 pursuant to a Court order for any purpose other than this
21 litigation and limiting access to a disclosure of such
22 information as detailed in the order -- in order in Claims 310,
23 so the County for destruction all protected health information
24 at the conclusion of the litigation.

25 **THE COURT:** What's the problem with that?

1 **MR. KALLINEN:** As we've stated before, we have no
2 problem with that, your Honor, and that's what we have in our
3 example.

4 **THE COURT:** Okay. So you agree to that position?

5 **MR. KALLINEN:** Yes.

6 **THE COURT:** All right. What's next?

7 **MS. COUNTISS:** Great.

8 **MR. KALLINEN:** Except as to our own, you know,
9 Patrick Green's medical records.

10 **MS. HULSEY:** We've already produced those.

11 **MS. COUNTISS:** Yes.

12 **THE COURT:** All right. What else?

13 **MS. COUNTISS:** So next would be other nonpublic
14 information. Their discovery requests seek all sorts of
15 investigative files and production of nonpublic information
16 that has -- includes social security numbers, dates of birth,
17 driver's license, you know, a whole list of very personal
18 information, information that has -- may have to do with
19 informants, victims of crimes, witnesses to crimes and so
20 forth.

21 And we're seeking a protective order that would
22 protect officers and other public employees and contractors --
23 health related and other nonpublic information that we -- you
24 know, that we've produced to be used for any purpose other than
25 this litigation and limits the access and disclosure of all

1 other nonpublic information produced by Harris County which we,
2 you know, anticipate there could be a significant amount of.

3 **MS. HULSEY:** And those points are at Docket Number 19
4 at Pages 4 through 5 and are included in our proposed
5 protective order.

6 **MR. KALLINEN:** On that, your Honor, of course, public
7 -- and the concept of what's public and what isn't is a
8 confusing term. However, I would like to point out that in
9 *Frair* (phonetic) *versus City of Arlington* and in *Zavala versus*
10 *City of Houston*, the Fifth Circuit has said that IAD and
11 personnel files are highly relevant to the case at hand and
12 Defendants have offered no facts suggesting that document
13 should be sealed. Furthermore, for instance, IAD files are
14 regularly made public through court proceedings citing *Frair*
15 *versus City of Arlington*, Fifth Circuit. So --

16 **THE COURT:** I don't think that employee -- other
17 employees' files need to be made public.

18 **MS. HULSEY:** Those are different --

19 **MS. COUNTISS:** Right.

20 **THE COURT:** Why can't you just obtain them in
21 discovery and use them in this litigation?

22 **MR. KALLINEN:** I mean, we could, your Honor. That's
23 certainly what we could do. However, the law is for openness
24 and if we did want to, you know, point out something with what
25 -- how the Government has erred to the public in regards to who

1 they hired or people who have been admonished, these are public
2 things and --

3 **THE COURT:** Okay.

4 **MS. COUNTISS:** Can I --

5 **THE COURT:** I feel like if that becomes necessary, it
6 ought to be addressed by a formal motion, Mr. Kallinen, and
7 that for purpose of discovery, I mean -- and for purpose of
8 your protective order, let's just go with the less -- with the
9 more protected status. All right?

10 **MR. KALLINEN:** And at any time, of course, your
11 Honor, we could bring a motion to lift the protective order as
12 pertains to the particular documents currently.

13 **THE COURT:** Yes, I would recommend that procedure.
14 All right? I mean, if there's a good reason for making
15 information public, I'm sure that you'll be able to demonstrate
16 it but for discovery purposes, which is what this protective
17 order is about, I'm not making any comment on the merits, you
18 know, or whether ultimately the information needs to be made
19 public but only for purpose of discovery. I believe that you
20 should keep the personnel information private and use it only
21 for this litigation.

22 Okay, what else?

23 **MS. COUNTISS:** Well, that sort of combines two
24 sections. We were talking about other nonpublic information
25 and then the next section is personnel records but ideally

1 those two --

2 **THE COURT:** The same --

3 **MS. COUNTISS:** -- go together to some extent.

4 **THE COURT:** -- the same philosophy applies for me.

5 **MS. COUNTISS:** Okay.

6 **MR. KALLINEN:** Well, your Honor, I would like to
7 point out, however, that the personnel records are routinely
8 received in a public -- for instance, in criminal cases and
9 through public records requests. So although it has the word
10 "personnel," it's not really personal. These are just records
11 of public employees that are put in there and I can -- but for
12 the sake of moving on and getting our documents prior to the
13 statute of limitations, which is up on March 24th, we will do
14 it whatever --

15 **THE COURT:** Let's go with the most expeditious and
16 efficient way without saying that -- you know, without
17 foreclosing publication in the future if it becomes appropriate
18 or you can demonstrate why it's a good idea. Once you see the
19 information, you'll even be more, you know, informed about
20 that.

21 **MR. KALLINEN:** Yes, your Honor.

22 **THE COURT:** Okay. Go on.

23 **MS. COUNTISS:** And then the -- I think the final
24 section is complaints and other investigative records and I
25 know Mr. Kallinen addressed that because generally when he made

1 reference to some case law -- but there's some significant
2 differences. For one thing, this case is about -- you know,
3 about Mr. Green becoming sick in the jail, going to the clinic,
4 going to the hospital and passing away.

5 The cases that Mr. Kallinen refers to are excessive
6 force cases typically where individual officers or individual,
7 you know, employees are actually named as Defendants and I
8 would assume the argument was made that the public was somehow
9 entitled to know more about those individuals' maybe
10 disciplinary past or whatever on the basis of the fact that
11 they were named parties and they were clearly connected to the
12 facts of the case where in our situation, you know, these
13 investigative records and complaints are not going to --
14 they're not necessarily going to involve people that are as
15 directly connected or certainly not named parties because there
16 weren't any individual folks named.

17 **MR. KALLINEN:** Your Honor, once again, as we all
18 know, in order to get the government liable, we have to show a
19 pattern of practice. If Harris County wants to say they'll
20 forego that finding of pattern or practice to get their
21 liability, we'll accept that. However, they probably won't.
22 So in that regard, we need to get all of the -- all the similar
23 -- you know, similar cases including the failure to discipline
24 and so forth.

25 There's been many cases where individuals -- for

1 instance, there was two criminal cases where individuals did
2 not make their rounds and did not treat this mentally ill
3 individual correctly and then there's other examples but -- so
4 as long as we get all the documents, we can, I guess, go with
5 the same as before. You know, if we want to do something with
6 it more public, then we could do that in a motion. However, we
7 would like to, you know, receive all the documents because they
8 go to pattern and practice.

9 **THE COURT:** Are we talking about a protective order
10 or a discovery issue?

11 **MS. COUNTISS:** I'm just talking about the protective
12 order.

13 **MR. KALLINEN:** Yeah.

14 **MS. COUNTISS:** I'm just talking about -- I'm just
15 replying to his -- the cases that he cited as the type of cases
16 that the public -- you know, where the public needs -- or they
17 believe needs to have more access to, you know, information
18 that -- type of information that we're saying we would like
19 protected.

20 **MR. KALLINEN:** And, of course, Plaintiff says that
21 many people dying in the Harris County jail is a public
22 interest just like they're getting shot on the street is a
23 public interest because it has to do with governmental
24 practices and policies.

25 **THE COURT:** Okay. Well, are there other parts of the

1 protective order that we need to talk about?

2 **MS. HULSEY:** Well --

3 **THE COURT:** Or --

4 **MS. HULSEY:** -- just to clarify, your Honor --

5 **THE COURT:** Yeah.

6 **MS. HULSEY:** -- I think that Mr. Kallinen has agreed
7 that at -- looking at our motion, Document Number 19 at Page 6
8 under Paragraph Number 8, Complaints and Other Investigative
9 Records -- and I'm sure he'll correct me if I'm wrong -- I
10 think he's agreed that for purposes of discovery, Plaintiffs
11 are fine with including these in the protective order. What
12 they want is disclosure, relevant materials in response to
13 their discovery request and should they feel the need may arise
14 later to go public with whatever, they will apply to the Court.

15 **THE COURT:** Okay.

16 **MS. HULSEY:** I think that's what you said, Randall.
17 Is that correct?

18 **THE COURT:** Here's what I'd like to do.

19 **MR. KALLINEN:** Well, it's -- yes, as long as this
20 facilitates the moving along and the statute of limitations,
21 which comes on March 24th after this case was filed in April of
22 this year, that would be -- you know, that would be fine but --

23 **THE COURT:** Okay. Well, here's what I'd like the
24 parties to do. Try to submit an agreed protective order. If
25 you -- if there are parts of it still that you don't agree on,

1 I'll resolve it. I'll resolve it but how soon can you get me
2 the final draft?

3 **MS. HULSEY:** Your Honor, if I could -- I'd like to
4 insert here. We have included as an attachment to Document
5 Number 19 a proposed protective order that we provided to
6 Plaintiffs' counsel and which addresses each one of the issues
7 we've just discussed here today. And I think it does --

8 **THE COURT:** Including the public information --

9 **MS. HULSEY:** Yes.

10 **THE COURT:** -- on it?

11 **MS. HULSEY:** And so perhaps they could review that --

12 **THE COURT:** Yeah. Well, you guys do that and get it
13 to me by this time tomorrow and if there are still parts of it
14 you don't agree on, I will, you know, make a decision and I'll
15 enter the protective order.

16 **MS. HULSEY:** Thank you, your Honor.

17 **THE COURT:** Okay. By this time tomorrow, is that too
18 soon?

19 **MS. HULSEY:** Your Honor, if possible, could we have
20 two days? I have a filing deadline today and I know I will
21 want to look at it.

22 **THE COURT:** Uh-huh, yes, two days.

23 **MR. KALLINEN:** Two days will be fine.

24 **THE COURT:** So today --

25 **MR. PECKHAM:** There are a lot of eyes looking at it,

1 Judge. So --

2 **THE COURT:** -- is the 10th. Tomorrow is the 11th.
3 Say, by the close of business on the 12th?

4 **MR. KALLINEN:** Sounds good.

5 **MS. HULSEY:** Yeah, that would be great.

6 **THE COURT:** So I can enter it on the 13th?

7 **MS. HULSEY:** Oh, that would be wonderful.

8 **MR. KALLINEN:** That would be great.

9 **MR. PECKHAM:** Friday, the 13th, Judge?

10 **THE COURT:** Oh, it's a lucky day, right?

11 All right. So now we have some discovery issues to
12 talk about but not as many as I thought we would have to.

13 **MR. PECKHAM:** You should -- we're all patting
14 ourselves on the back that we --

15 **THE COURT:** All right, I'll pat you, too. I'm very
16 happy when you can work out discovery disputes.

17 Now, I'm looking at Page 2 of the County's opposition
18 to the Plaintiffs' motion to compel.

19 **MR. PECKHAM:** That's what I have, Judge.

20 **THE COURT:** And there's a Paragraph 3 that has the
21 things that are still in controversy?

22 **MR. PECKHAM:** Yeah, I think one of those is actually
23 gone based upon production since that time but we'll hit it as
24 we go if that's okay.

25 **THE COURT:** Yes, it is. Go in order that you like.

1 **MR. PECKHAM:** Judge, Charles Peckham and I want to
2 talk a little bit about the motion. I think it's helpful to
3 have a little bit of a background. As the Court is aware from
4 the -- been involved in the case now for some time, Patrick
5 Green died on March 25th, 2015. He was a Baylor graduate. He
6 had some problems with drugs that -- after school, an addiction
7 which put him in the Harris County jail. He was a good kid.
8 His parents are both lawyers. His uncle is on the Texas
9 Supreme Court. This is not a family that's going to go away
10 lightly and that's part of why this got involved so quickly.

11 On the 25th, as a friend of the family, who's also a
12 lawyer, sent a letter -- a legal-hold letter to Harris County
13 to Vince Ryan as well as to the Sheriff asking for a legal hold
14 on various documents and information. As the Court is well
15 aware, one of those things was videotapes. The County took the
16 position that because this legal-hold letter was a threat of
17 litigation that they would hold on to and not produce. They
18 fought that battle with the Attorney General and the Attorney
19 General's office and in June of 2016, about, well, a year and
20 two months later, Harris County wrote a letter to the Attorney
21 General saying, the matter is now moot because we've destroyed
22 the videotapes.

23 So now we're in a position, Judge -- and I think what
24 we're looking at on the Table of Contents is Request for
25 Production Number 4. So it's A and H. And so it's the first

1 and the last that's on their list.

2 The first has to do with the videotapes and that's
3 Request for Production Number 4. We've requested videos.
4 We've gone to great lengths to try to obtain videos. We
5 understand that there was an Internal Affairs investigation.
6 There were other investigations perhaps by the District
7 Attorney's office which I think somebody sent a PIA request, a
8 Public Information Act request --

9 **THE COURT:** Yeah.

10 **MR. PECKHAM:** -- to the District Attorney in December
11 and that's what they filed their motion on last night. So
12 we've gone through all kinds of activity to try to get the
13 information. If the videotapes don't exist -- if they have
14 actually been destroyed by Harris County, then at least for
15 request for Production Number 4, we need to have some kind of
16 an idea as to the chain of custody for those videotapes.

17 We know they were made. We -- although Harris County
18 denies at some point that they existed, that they were made,
19 they represented to the AG that they were destroyed and we have
20 testimony under oath from other inmates saying video cameras
21 were there. So it's not just important to the pod where
22 Patrick was to see whether he was on that videotape but there
23 are I-60s -- now, I'm not sure, of course, where -- please, if
24 I'm insulting your intelligence, stop me but I-60s are
25 effectively a complaint mechanism by inmates to say, I need

1 some medical care and they're put on a piece of paper and
2 they're slipped into a box outside of the pod and that in
3 itself is on videotape.

4 So we have testimony from inmates that that existed,
5 that an I-60 was made, that Patrick Green complained, that
6 others complained on his behalf and so we can't get any of that
7 information from Harris County and that's Request for
8 Production Number 4 and that's been the subject of Public
9 Information Act request. That has been -- in fact, I think the
10 AG is taking the position with us now that that needs to be
11 produced but we don't have it and if you don't have it, we need
12 some kind of an explanation as to who got the videotapes, how
13 they were destroyed, where they went, are there other people
14 that may now have them, for example, that have not been
15 disclosed to us. We need to have that information.

16 So I'm going to segue into the inspection. Not only
17 is the failure to produce those videotapes important for an
18 inspection, the inspection is important on its own right. We
19 know that there are videotapes. There are monitors and there
20 are people watching them. So we need to see, first, where the
21 videotapes are played, where the video --

22 **MR. KALLINEN:** Cameras.

23 **MR. PECKHAM:** -- cameras --

24 Thank you very much, Randall.

25 -- are placed. We also need to see where the

1 monitoring occurs. We also need to see site lines between the
2 -- where the detention officers were placed and where Patrick
3 Green was in his cell. All of those things are remarkably
4 important as well as the placement of the medical box for I-60s
5 as well as any other complaint box. Those are all dramatically
6 and remarkably important for this case so that we can show
7 exactly what happened and it wasn't just March 25th but in the
8 week prior and even a little bit before that.

9 So that's what we've asked for. In fact, on Request
10 for Production Number 4 regarding videotapes, we've asked for
11 it for, you know, less than ten days -- for eight days. We're
12 very specific about what we're seeking. So if we can't get
13 that, we need the inspection now. Originally, Harris County
14 agreed to an inspection and were going to get us protocol and
15 then they decided at the last minute that they didn't want to
16 do that either. So that went back on our list of contested
17 matters. That's where we are today.

18 **MS. COUNTISS:** Can I address a few things --

19 **THE COURT:** Yes.

20 **MS. COUNTISS:** -- before we get too far into it?
21 First of all, I'm actually kind of -- I'm confused because
22 Plaintiffs' Request for Production Number 4 does not ask for
23 what they're saying it asks for and so this discussion about
24 focusing Discovery Request Number -- I mean, Request for
25 Production Number 4 around videos of the -- somewhere in the

1 jail is not -- I mean, this request does -- asks for documents,
2 videos, recordings, yada, yada that are a part of the personnel
3 file of any and all the jail guards and then it's covering a
4 one-year time period from March 18, 2015 to March 26, 2016. So
5 I --

6 **MR. PECKHAM:** I apologize.

7 **MS. COUNTISS:** -- I'm unclear about -- I mean, I
8 think he might be refer -- I think they might be referring to a
9 different request?

10 **MS. HULSEY:** They're referring -- I believe they're
11 referring to a different request that we're all working on
12 because Request Number 4 goes into jail guards, detention
13 officers, other employees' or contractors' files.

14 **MS. COUNTISS:** And then secondly, as to the PIA
15 portion of the argument, the Public Information Act, I mean, we
16 don't -- I don't handle Public Information Acts. We have
17 people who do. Counties -- County entities have people in
18 their departments who handle that and they don't all come
19 through our office and as counsel pointed out, if they're
20 unable to, you know, get what they want, they have a remedy
21 through the AG's office, among other things, but that's
22 separate and apart from the discovery process that we're trying
23 our best to go through in a way that protects the people that
24 need to be protected, you know, and allows for open -- you
25 know, open and clear discovery but with some guidelines and

1 some rules of engagement.

2 And that's kind of been the problem is this very,
3 very murky line between what's -- you know, what PIA requests
4 Harris -- you know, Harris County didn't answer the way they
5 wanted versus those of us who are the lawyers on this case who
6 are responding to discovery requests. And so -- and then I
7 guess we went into the inspection part as well. We didn't -- I
8 mean, it's a bit of a stretch to say that we had agreed to an
9 inspection. We discussed it in the phone conference.

10 We initially said we would put our heads together and
11 see if there was a protocol we could come up with that would --
12 you know, that would be satisfactory. We weren't able to --
13 amongst ourselves weren't able to do that and came to a
14 different conclusion that wasn't -- it wasn't that we, you
15 know, strung them along or anything like that and in particular
16 because there's nothing about the facts of this case that in
17 any way warrant that level of intrusion into a jail cell that
18 is, for one thing, not the same as it was when Mr. Green was
19 there a year ago -- more than a year ago but in particular
20 because there was no incident.

21 There was no -- this wasn't a jail extraction case.
22 This wasn't an inmate fight. Mr. Green was -- became ill. He
23 was taken from his cell to the clinic. He was taken from the
24 clinic to the ambulance. He was taken from the ambulance to
25 the hospital. He passed away in the hospital and so there was

1 no -- there's no triggering event that happened in that cell
2 that any photos or video is going to show.

3 **THE COURT:** That's your perspective but I can
4 understand the Plaintiff has a different perspective on that.

5 **MS. COUNTISS:** Of course.

6 **THE COURT:** And so an inspection might be warranted
7 but I think it's more useful to go number by number and -- so I
8 can decide how to resolve your disputes.

9 **MS. COUNTISS:** Okay.

10 **THE COURT:** All right, let's talk about Request for
11 Inspection and Request for Production Number 4. You say that's
12 about employee videotapes, not about a video of the cell?

13 **MR. PECKHAM:** And, Judge, if I can interject. Three
14 was more about videotape of the cell. Four is about videos of
15 -- related to personnel files and I think what we're talking
16 about are trading -- you know, not -- as the Court knows,
17 institutions all over have -- and I don't know whether Harris
18 County has done this or not but we'll find out certainly but
19 lots of institutions but lots of institutions put their
20 training on videotapes for a repetitive nature and things like
21 that. We -- those would be things that we would be looking for
22 here.

23 I find it kind of interesting because I don't --
24 there really isn't good legal objection to what they're saying.
25 We've got a protective order now that's going to be in place to

1 protect this information and when we're dealing with
2 proportionality when we're trying to deal with *Monell* and a
3 pattern and practice, we certainly need to get that continuing
4 training regarding the policies and procedures from Harris
5 County.

6 **THE COURT:** Okay. So what's -- do you have an
7 objection to that?

8 **MS. COUNTISS:** I know. Your Honor, the issue with
9 Number 4 is how hugely, hugely broad it is in time and in terms
10 of all of the personnel that could possibly be involved.
11 They're asking -- I mean, it -- and -- you know, he wasn't
12 really even able to describe what kind of videos he was looking
13 for but apparently whatever it is, they're going to be along
14 with all these other things that are part of the personnel file
15 of any and all the jail guards, detention officers or other
16 employees or contractors of Harris County, not even limited to
17 just the jail that he was in but who guarded or observed his
18 cell inmates and then I'm -- again, I'm unclear -- we're
19 unclear about the timeframe. I mean, if it's a typo, that
20 would be great to know but I can't guess that. It says --

21 **THE COURT:** Okay.

22 **MS. COUNTISS:** -- a year's worth of records.

23 **THE COURT:** How would you know that? You were saying
24 it's narrowed because you described the type of employees.

25 **MR. PECKHAM:** That's right.

1 **THE COURT:** And what timeframe are you talking about?

2 **MR. PECKHAM:** And, Judge, I think it's probably
3 helpful -- and I don't think this is a typo but I think we can
4 limit it to -- if we're dealing with those who guarded or
5 observed Patrick, his cell and inmates, then those that would
6 have been on the personnel files and training and the
7 information of those people who were on duty between March
8 18th, 2015 and March 26th, 2015 because we're dealing with -- I
9 think that it potentially was a typo because we're dealing with
10 the date of death being March 25th. So I think that may be a
11 typo. It should have been one week or eight days.

12 **THE COURT:** All right.

13 **MS. HULSEY:** So, your Honor, what they're seeking are
14 complete personnel files, all documents, videos, recordings,
15 photos, intangible things that comprise or are part of the
16 personnel file of any and all jail guards, detention officers
17 or other employees or contractors of Harris County who guarded
18 or observed Patrick Green, his cell and inmates housed in his
19 cell from March 18, 2015 to now, March 26, 2015.

20 We have three shifts of officers and you have a
21 couple officers in the pod on the first shift. You have one in
22 the pod on the second. You have one in the pod on the third
23 shift. You have four rovers working that floor the first
24 shift. You have four rovers working the second shift. You
25 have three rovers working the third shift. So right now we're

1 up to --

2 **MR. PECKHAM:** Fifteen

3 **MS. HULSEY:** -- two, four -- 15 and then you have
4 other personnel. You have lots of other personnel.

5 **THE COURT:** Have you identified those personnel?

6 **MS. HULSEY:** We've identified some of those personnel
7 but we have not identified all nor could we identify all.

8 **THE COURT:** Okay. Well, I don't think that sounds
9 over-burdensome or overbroad.

10 **MS. COUNTISS:** And, your Honor, there are some
11 specific individuals whose -- who gave -- who are either --
12 this is the -- right?

13 **MS. HULSEY:** Yes.

14 **MS. COUNTISS:** Well, that would be not the same. Is
15 that the same?

16 **MS. HULSEY:** Yes, that'll work.

17 **MS. COUNTISS:** -- who are mentioned, like, for
18 example, in the Significant Event Bulletin and then some who
19 gave statements in connection with -- you know, with the -- I
20 guess, the investigation that went on. Those are all -- you
21 know, those are clearly identified were people and that's a
22 much smaller number than if we had to walk -- you know, if we
23 had to determine how many employees and contractors in Harris
24 County observed him during, you know, that time period.

25 **THE COURT:** I think you should try. It's not a long

1 time period. It's --

2 **MS. HULSEY:** Well, it was until --

3 **MS. COUNTISS:** Well, yeah, it -- I mean, it was --
4 that was part --

5 **THE COURT:** No, it's not.

6 **MR. PECKHAM:** Judge, we'll happily expand it.

7 **THE COURT:** Yeah.

8 **MS. COUNTISS:** That does -- yeah, that makes a
9 difference for sure.

10 **THE COURT:** No, it's not. I think you should make an
11 effort to satisfy that request as modified, okay, as we
12 discussed on our record here.

13 Let's talk about Number 19.

14 **MR. PECKHAM:** I think, your Honor, we have gotten all
15 the pass-on sheets and we asked for them under a different name
16 but they're effectively pass-on sheets. We think we have them
17 all and so at least for this hearing, let's move past 19. I
18 think we're okay with that.

19 **THE COURT:** Okay. Twenty-six.

20 **MR. PECKHAM:** Well, 26, 27 and 29 are related.

21 **THE COURT:** Okay.

22 **MR. PECKHAM:** And they deal with -- Patrick Green
23 died from meningitis and there is -- I think I saw somewhere in
24 the response that there was an allegation that perhaps he had
25 obtained meningitis from a newly obtained tattoo. We know from

1 the autopsy there was no new tattoo. The only thing was some
2 bruising from a kicking that he received from Detention Officer
3 Ervin. So -- and that was as he was -- he just couldn't move.

4 Meningitis, as the Court is probably aware, is
5 something that doesn't come on all of a sudden. It occurs over
6 a period of days and it also doesn't come on from no spur.
7 There's a trigger for it and typically that is some kind of
8 bacterial infection that occurs. So we're dealing with
9 questions about -- 26 we're dealing with ventilation and
10 records regarding cleanliness, et cetera for ventilation.

11 Twenty-seven we're dealing with mold and viral growth
12 reports, anything that's out there regarding, you know,
13 cleanliness and that leads into 29 which were -- which are
14 cleaning procedures. Who's doing the cleaning, what the
15 procedures are and that kind of matter for a period of time and
16 it -- if the Court looks at those requests, we're dealing with
17 -- for a time period from January 1, 2015 to March 25th of
18 2015. It's a three-month period of time.

19 Patrick was placed in custody December the 31st of
20 2014. So we're really dealing with a three-month period of
21 time. That's what we're seeking because if we're dealing with
22 *Monell*, we want to deal with the pattern and practice regarding
23 the ventilation, cleanliness, mold and viral growth reports and
24 it's my understanding that there have been other instances in
25 Harris County of difficulties regarding cleanliness and

1 sickness of inmates.

2 **THE COURT:** Okay.

3 **MS. COUNTISS:** Your Honor, Mr. Green didn't -- he
4 died of acute bacterial meningitis which is far different, for
5 one, than meningitis. Both are awful but the usage of the
6 words "acute" and "bacterial" make a huge difference in terms
7 of his cause of death. In fact, it was determined, you know,
8 upon autopsy, the symptoms he presented with were altered
9 mental status but aside from that, no one else in -- anywhere
10 in any Harris County facility during that time period
11 contracted meningitis -- bacterial meningitis -- acute
12 bacterial meningitis -- no one in his cell and, in fact, you
13 know, in our searching going back five or six years, there are
14 no other cases of acute bacterial meningitis in the jail.

15 It is -- it was determined that what he had was not
16 contagious. They did, of course, initially quarantine the cell
17 to -- you know, to confirm but once that -- once the medical
18 personnel and experts confirmed that, you know, the type that
19 he had, it was very clear then that it was not a contagious
20 form. Also, no one else contracted it.

21 That being said, again, a more limited in-scope
22 request that doesn't encompass every single Harris County
23 facility considering that the only one at issue is the, you
24 know, 701 San Jacinto might be a more reasonable approach. We
25 might -- potentially we could agree to produce only as to that

1 Pod 3C that -- yeah, Pod 3C at 701 San Jacinto, you know,
2 during a relevant time period as opposed to -- sorry, I have to
3 find the -- yeah, as opposed to in the jail which was to
4 encompass Baker Street and numerous other facilities.

5 **MS. HULSEY:** There's a 1200 Baker Street jail, 701
6 North San Jacinto jail, 711 North San Jacinto jail, 1307 Baker,
7 all the substations which have little jail-holding facilities
8 in them. So we're not limited -- this discovery request is not
9 limited in scope to 701 or the third floor of 701.

10 **THE COURT:** What's your position on that?

11 **MR. PECKHAM:** Certainly. I think it's interesting
12 that they want to limit it. That tells us that perhaps there's
13 something else there. When we're dealing with pattern and
14 practice though, your Honor, we're not dealing with pattern and
15 practice regarding a pod. We're dealing with pattern and
16 practice regarding Harris County and so when we're dealing with
17 that, we're dealing with rules, policies, practices that deal
18 with multiple holding facilities and jails, not just this one,
19 not just this pod.

20 **MS. COUNTISS:** But it's a -- it's not just a pattern
21 or practice of something that makes the County look bad. It's
22 a pattern and practice that goes to deliberate indifference to
23 serious medical needs. That is what this case is about. That
24 is -- you know, we are resisting issues in production related
25 to the case itself and that doesn't prevent them establishing a

1 pattern and practice if they're able to but to just broadly
2 continue to throw out the word "pattern and practice," we need
3 everything from everywhere because that way we can figure out,
4 you know, what our pattern and practice is going to be is far
5 beyond the scope.

6 **THE COURT:** All right.

7 **MS. HULSEY:** And, your Honor, if I may add. At
8 Docket Number 25, Page 19, we cite the *Brown versus Harris*
9 *County, Texas* case. It's a case, I believe, decided by Judge
10 Rosenthal in the District Court, 2010 Westlaw, 774138 at Page
11 11 and Judge Rosenthal said, "While Brown's evidence shows a
12 general pattern of overcrowding in detention
13 facilities in Harris County, the evidence does not
14 show a pattern of incidents of inmate-on-inmate
15 sexual assaults at the Harris County jail area where
16 Brown was housed."

17 Now, that decision by Judge Rosenthal was affirmed by
18 the Fifth Circuit at 409 Fd.App 728. That's a Fifth Circuit
19 2010 opinion. And again -- or what I should say is that the
20 Court looks for similar incidents and Judge Rosenthal in *Brown*
21 said, you look at the area where the individual was housed.

22 **THE COURT:** Okay. What's the time --

23 **MR. PECKHAM:** Can I -- all right.

24 **THE COURT:** -- what's the time period you're asking
25 for?

1 **MR. PECKHAM:** We've asked for January 1, 2015 to
2 March 25th, 2015. That's a three-month period of time or
3 slightly less and -- if I may. I mean, it seems to me that
4 this is going to be a fairly limited amount of information.
5 We're not talking about something hysterically overbroad.

6 **THE COURT:** I wonder if there even is any information
7 about mold studies in a prison.

8 **MR. PECKHAM:** And there may not be but it's a
9 question for us. It's a question --

10 **THE COURT:** Right.

11 **MR. PECKHAM:** -- that -- it was a question of
12 admissibility. It's a question of discoverability.

13 **THE COURT:** Correct.

14 **MS. COUNTISS:** And, again, we're willing -- we can
15 certainly agree to produce as to the 3C at 701 San Jacinto,
16 your Honor, in that timeframe.

17 **THE COURT:** Okay. I'm not going to make it that
18 narrow --

19 **MS. COUNTISS:** Okay.

20 **THE COURT:** -- but I'll make a decision. What about
21 Number 33?

22 **MR. PECKHAM:** You've got to flip the pages, Judge.
23 Your Honor, again, and I know Harris County doesn't like me to
24 throw out the words "pattern and practice." That's always a
25 dispute in these cases but we're dealing with, again, training

1 of medical personnel, training of personnel in the jails,
2 guards, detention officers with respect to identification and
3 treatment of lethargy, altered mental status, sepsis, viral and
4 bacterial meningitis.

5 Every college, every elementary school, every middle
6 school, every high school and certainly every jail has some
7 kind of policy or procedure with respect to identifying people
8 who are showing evidence of meningitis because it's such a --
9 respectfully, a killer and it has to be identified and so those
10 -- that kind of information, I think, is terribly important.

11 **THE COURT:** Okay. And you have a problem with
12 producing that training -- or that policy?

13 **MS. COUNTISS:** Well, we -- it's more about the scope
14 of the request, your Honor. We -- there are medical personnel
15 who are involved who are certainly going to be, you know,
16 licensed in accordance with State standards. There are
17 detention officers who are actually licensed and certified
18 pursuant to State standards under TCOLE.

19 The detention officers though, however -- you know,
20 they're not medically trained. They're certainly not
21 considered medical personnel and it's not that we -- you know,
22 we just need to narrow -- we'd like to narrow this down so that
23 it's specific as to TCOLE training, certifications for the
24 detention officers which would -- you know, would logically
25 include what topics they were trained -- you know, trained on

1 in order to have their license and keep their license and same
2 with the clinic personnel that were working in -- or interacted
3 with, you know, Patrick Green in the jail.

4 So it's more about the scope of all documentation
5 reflecting the training, you know, this sort of unidentified
6 medical personnel, guards, officers, contractors. You know,
7 we're just hoping to narrow this down to something a little
8 more doable.

9 **MR. PECKHAM:** And I --

10 **MS. COUNTISS:** Do you have more to add?

11 **MS. HULSEY:** And --

12 **MR. PECKHAM:** Oh, I'm sorry.

13 **MS. HULSEY:** -- I'm sorry. Let me finish. It's not
14 limited at all in time and otherwise not limited in scope and
15 it basically asks for the world in terms of -- or amorphously
16 asks for the world in terms of training. I think what we're
17 looking for is something on a much more limited basis, TCOLE
18 records relating to certain specified officers, that type of
19 thing.

20 **MR. PECKHAM:** Judge, it --

21 **THE COURT:** All right. What's your response?

22 **MR. PECKHAM:** Absolutely. In 2009, there was a
23 Justice Department investigation that identified training of
24 medical personnel, training of detention officers, training of
25 contractors in the jail as a problem and I think if we wanted

1 to do that, we could limit it in time as to include and go
2 forward from the date of that 2009 Justice Department
3 investigation.

4 **THE COURT:** Until when?

5 **MS. HULSEY:** And we do not agree to that and I might
6 add, as far as this DOJ letter he's referring to, it was a
7 notice letter noticing the DOJ's intent to file suit. The DOJ
8 never filed suit over that.

9 **THE COURT:** Okay. Well --

10 **MR. PECKHAM:** Mr. Peckham, I believe, had --

11 **THE COURT:** -- from 2009 until when?

12 **MR. PECKHAM:** Until -- remind me -- the 26th of March
13 of 2015.

14 **THE COURT:** Do you have a comment?

15 **MR. KALLINEN:** Oh, your Honor, I just wanted to
16 mention that whether somebody or not has a certain list of
17 TCOLE -- there's these lists of TCOLE classes taken. That
18 won't tell anything about whether their training is specific
19 enough to identify this. There's no case law that says TCOLE
20 training prevents cases of deliberate indifference for, you
21 know, medical -- for medical care. And so I just wanted to
22 point that out that we need all the medical records and --

23 **THE COURT:** And you need what? I'm sorry.

24 **MR. KALLINEN:** All the training records.

25 **THE COURT:** The training records.

1 **MR. KALLINEN:** The training records. And as far as
2 going back in time, we'll need the training records like -- for
3 instance, if we're restricted in time, they might have had some
4 training 20 years ago which is, you know, good training and if
5 we did go back five years and say, ah ha, you didn't have any
6 training, then at trial, they jump up and say, yes, look at
7 this 20-year-old record. Did you forget any of those
8 trainings, sir? No, we didn't. So in other words, we need to
9 see what their training was no matter when it was, not what was
10 recent.

11 **MS. HULSEY:** And, your Honor, if I may respond.
12 There is no failure to train claim in Plaintiffs' live pleading
13 in their First Amended Complaint. Secondly, as far back as
14 *Benavides versus*, I think, *County of Wilson*, something like
15 that, the Fifth Circuit has held that so long as training
16 complies with the State regulations, then the training is, per
17 se, adequate and Constitutional. So --

18 **THE COURT:** Okay. Well, this is likely to lead to
19 discoverable evidence. So I think you should respond from --
20 for -- with training records for the people described between
21 the date of the DOJ letter in 2009 until March 26th, 2015.

22 **MS. HULSEY:** What specific people, your Honor?

23 **THE COURT:** How did you describe them?

24 **MR. PECKHAM:** Let's see. Training of medical
25 personnel, guards, detention officers and contractors of the

1 jail, period, is how we identified it.

2 **MS. COUNTISS:** So are we talking about -- I mean, I'm
3 -- again, you've already said how you're ruling, your Honor.
4 So I've got to be clear on this because I'm confused. So are
5 we talking about per person? So from 2009 to 2016, you know,
6 we identify every Harris County medical personnel, Harris
7 County guard, detention officer and contractor of any Harris
8 County jail and then we produce the training for each of them
9 because I can't possibly --

10 **THE COURT:** Is that what you're asking for?

11 **MR. PECKHAM:** That's -- yeah, that's -- I think
12 that's a little bit much. I think what we're looking for is
13 the training manuals, training information that's given to jail
14 personnel and I think that the previous --

15 **THE COURT:** I think it's a policy thing.

16 **MR. PECKHAM:** Right. I think the previous request
17 when we asked about personnel records specifically, it covered
18 those specific individuals who --

19 **THE COURT:** For the narrower group of people.

20 **MR. PECKHAM:** That's correct.

21 **THE COURT:** All right.

22 **MS. HULSEY:** Your Honor, you're going to put your
23 order on this one in writing, correct?

24 **THE COURT:** Yeah, yes, uh-huh, I am.

25 So we're looking for you to produce the type of

1 training and of what -- not on a specific employee basis but
2 what is the training of your personnel who are guards or clinic
3 employees -- is that how you described them?

4 **MR. PECKHAM:** That's correct.

5 **MS. COUNTISS:** Does that include --

6 **THE COURT:** Does he recognize --

7 **MS. COUNTISS:** I'm sorry.

8 **THE COURT:** -- symptoms of bacterial meningitis --

9 **MR. PECKHAM:** Yeah, we --

10 **THE COURT:** -- from the day of the DOJ letter in 2009
11 until March 26, 2015?

12 **MS. COUNTISS:** Just bacterial meningitis? Their
13 request involves lethargy, altered mental status, sepsis --

14 **THE COURT:** All of that, right.

15 **MR. PECKHAM:** That's right.

16 **THE COURT:** What kind of training does your -- what
17 does your policy instruct them --

18 **MR. PECKHAM:** To do.

19 **THE COURT:** -- to recognize --

20 **MS. COUNTISS:** And -- I'm sorry.

21 **THE COURT:** -- and how -- taught to act?

22 **MS. COUNTISS:** Okay. Specific to Harris County's --
23 so in other words, I don't -- again, I'm just -- so for
24 example, a nurse in a clinic --

25 **THE COURT:** Right.

1 **MS. COUNTISS:** -- she's also -- she's also -- her
2 licensing by the State involves that -- those topics. Is that
3 also something we need to be producing in this or do they just
4 want to know what Harris County tells people they hire to do in
5 regards to -- or doesn't tell or --

6 **THE COURT:** It's about what the County tells them.

7 **MR. PECKHAM:** And, your Honor, of course, I know it's
8 -- we have to kind of explore the parameters but to take it to
9 an illogical conclusion would be to require them to go out and
10 find out what training those medical officers got from their
11 colleges, their medical school. That's not --

12 **THE COURT:** That's not what I'm anticipating that you
13 do --

14 **MR. PECKHAM:** Sure, right.

15 **THE COURT:** -- at all.

16 **MS. COUNTISS:** Okay, great. I mean, I -- because I
17 can only read --

18 **THE COURT:** That's not what the lawsuit is about.

19 **MS. COUNTISS:** -- how it's written.

20 **THE COURT:** That's not what the lawsuit is about.
21 All right, what's next?

22 **MR. PECKHAM:** Forty-two, Judge, and 43. Forty-two
23 and 43 are a little bit different --

24 **THE COURT:** Okay.

25 **MR. PECKHAM:** -- but 42 has to do with any

1 documentation regarding face-to-face contact with, observation
2 of each inmate in that particular pod, including Patrick, for a
3 25-day period, March 1st to the 25th. That's it. So we can
4 obtain from that information hopefully, Judge, a trail of what
5 the training was and the pattern and practice. We know that
6 there has been a question of Harris County in the past
7 regarding the ignoring of their own training as a custom and
8 the ignoring of inmates as a custom.

9 In this case, for example, we have obtained
10 statements from inmates -- and typically, Judge, we don't, you
11 know, write an affidavit and say, here, sign this. Typically
12 what we'll do is we'll take a court reporter out and talk to
13 somebody and say -- as a recorded statement and say, what did
14 you experience in jail, which we have done and three of those
15 people have told us that they were ignored in the jail. They
16 obtained retribution in the jail when they -- after the
17 investigation. Some of the jail officers, they believe, were
18 retaliating against them.

19 So we need to see what was occurring during that
20 period of time face to face with Patrick Green as well as other
21 inmates. We also know --

22 **THE COURT:** What's the request for?

23 **MR. PECKHAM:** Sure. It's, produce all documentation
24 regarding -- reflecting each observation, face to face or
25 otherwise, of each inmate in Pod 3C4, including Patrick Green,

1 performed by any guard, detention officer, healthcare
2 professional or other contractor or employee of Harris County
3 for that 25-day period, March 1st to March 25th.

4 **THE COURT:** So they were -- you're looking for them
5 to have made a record of interaction with the -- with
6 Mr. Green?

7 **MR. PECKHAM:** To the extent it exists. We know
8 there's some pass-on reports which are effectively shift-change
9 reports --

10 **THE COURT:** Okay.

11 **MS. COUNTISS:** Which we produced -- we produced from
12 January to March --

13 **MS. HULSEY:** April.

14 **MS. COUNTISS:** I mean, to April of the year in
15 question, your Honor. In addition, the issue we have with this
16 is mostly related to HIPAA because they're asking for
17 information about when -- what medical care or medical requests
18 or medical treatment other inmates received in the jail. We
19 can't possibly release that without having addressed the
20 protective order issue that we brought up.

21 **THE COURT:** All right. But now that we have --

22 **MR. PECKHAM:** Well, we have the protective order --

23 **THE COURT:** -- can you produce it?

24 **MS. COUNTISS:** From -- so we're talking about the --
25 well, we have produced the pass-on logs.

1 **THE COURT:** Right.

2 **MS. COUNTISS:** And so, yes. So I suppose any other
3 responsive information that was waiting for HIPAA protection to
4 -- you know, it'll --

5 **THE COURT:** They'll produce it?

6 **MS. COUNTISS:** -- be produced.

7 **THE COURT:** All right, okay. Good.

8 **MR. PECKHAM:** And if that's the answer to 42, I think
9 that encompasses 43 which asks for I-60s, other requests for
10 medical treatment by the inmates in 3C4 for a week period of
11 time, March 18th to March 25th. It's a little bit of a
12 difference because before, we were looking for what the staff
13 saw and now we're asking what did the inmates report or
14 complain of or see. So that's the I-60s or requests for
15 medical treatment for that period of time.

16 **MS. COUNTISS:** I do --

17 **MR. PECKHAM:** It's only one week.

18 **MS. COUNTISS:** I do want to go back though. There
19 have been a lot of statements made about things that the
20 Plaintiffs are claiming are facts and established facts in the
21 case that are absolutely not established yet and I just --

22 **THE COURT:** Okay. I understand you have different
23 perspectives on what the facts are. I -- you know, this
24 happens in every case.

25 **MS. COUNTISS:** Of course. I just -- I've read the

1 transcripts he's referring to and they don't -- they don't
2 indicate much of the information he's claiming they do and I
3 just want to be clear.

4 **THE COURT:** But you can produce those I-60s as well
5 under the protective order?

6 **MS. HULSEY:** Well -- no, those are not retained and
7 we told them that. Let's see. First of all, an I-60 is a term
8 relating to prison -- Texas Department of Criminal Justice.
9 This is a jail but inmates sometimes refer to medical requests
10 as I-60s. When an I-60 -- when an I-60 -- when a medical
11 request is received in Medical, the complaint is recorded on a
12 triage log and the request is not retained. We've told them
13 that and we've been waiting on the protective order as far as
14 producing those logs.

15 **MR. PECKHAM:** Then we're in great shape.

16 **MS. HULSEY:** Yeah.

17 **MR. PECKHAM:** We'll --

18 **MS. HULSEY:** And this one, 43 wasn't even an issue, I
19 thought, after our telephone conversation.

20 **MR. PECKHAM:** Oh, I'm sorry. It's --

21 **MS. HULSEY:** Your email said --

22 **MR. PECKHAM:** -- under your response.

23 **MS. HULSEY:** Well, your email said in one section --

24 **MR. PECKHAM:** Sorry, we're talking to each other.

25 **THE COURT:** That's okay.

1 **MS. HULSEY:** So it's not at issue in another section.
2 It is in this one. So --

3 **MR. PECKHAM:** Okay. We're clear.

4 **THE COURT:** Okay. So you probably worked out Number
5 42?

6 **MS. HULSEY:** Forty-three.

7 **THE COURT:** Forty-three?

8 **MS. HULSEY:** Yeah.

9 **THE COURT:** Okay. All right. Now, the thing about
10 the videotapes -- you're trying to negotiate a resolution of
11 that. That's not one of the things that's disputed here?

12 **MS. COUNTISS:** They're -- the dispute -- the answer
13 is, no, that's not disputed here because the request that we're
14 in dispute did not cover the videos that he described -- that
15 they described as the basis for believing they need an
16 inspection.

17 **THE COURT:** Okay. So the videotapes, were they
18 destroyed or not destroyed?

19 **MS. HULSEY:** They were overwritten, if that's a
20 proper word. There's videotaping in the jail and after a
21 certain period of time, the computer system overwrites itself.
22 The letter that the Plaintiffs refer to is a March 25th, 2015
23 Notice of Intent to Sue letter. It is attached as Exhibit A to
24 the Plaintiffs' motion to compel, Document 16-1 at Pages 1
25 through 2 and in that letter, which was submitted to Harris

1 County within less than 24 hours after Patrick Green's death,
2 the Plaintiffs indicate that they're going to sue Harris County
3 and -- as a consequence of their son -- of Plaintiffs' son's
4 death and they asked Harris County to preserve documents,
5 videotapes and the like, you know, other things relating to
6 their claims and Harris County's defenses.

7 And, of course, Harris County had no idea what claims
8 Plaintiffs were referring to by this letter which, again, is at
9 Document 16-1 at Pages 1 through 2.

10 **MR. PECKHAM:** And if you're -- if I may, your Honor?

11 **THE COURT:** So then after you received that letter,
12 you're saying the videotape was over-recorded?

13 **MS. HULSEY:** Overwritten and they're claiming, for
14 example, that the videotapes would have shown something and
15 it's our position that they -- that there aren't videotapes
16 that would have shown something.

17 **MS. COUNTISS:** So there's not -- there's absolutely
18 no -- not going to be any video of the inmates in their cells.

19 **MR. PECKHAM:** My question --

20 **MS. COUNTISS:** That doesn't happen.

21 **MS. HULSEY:** And there's no video that captures a
22 look at the grievance or at the medical request box.

23 **MS. COUNTISS:** The medical request box. They have
24 interviewed out of a long list of inmates and former inmates.
25 They have chosen two or three and I think maybe one of them

1 said, oh, yeah, yeah, yeah, there's a camera by the medical box
2 or whatever but that's not accurate. There is not a recording
3 of where inmates put their requests to see a nurse.

4 There is no video that looks into the cell and
5 there's certainly no video in the clinic which would, you know,
6 be a HIPAA violation and so at best, there could potentially
7 have been something that would maybe have shown him taken to
8 the clinic, not from his cell because there's not video in the
9 cell. There's -- there -- maybe at the elevator. Right, there
10 may be a camera by the elevators. In other words, he was taken
11 on a stretcher, went to the clinic, was in the clinic for an
12 hour or a little more where there's no video and then went to
13 the hospital in an ambulance to Ben Taub and passed away
14 shortly thereafter.

15 So --

16 **THE COURT:** So it's all -- video, if it existed,
17 would have been in the hallways?

18 **MS. HULSEY:** Right.

19 **MS. COUNTISS:** Yes.

20 **MS. HULSEY:** Right.

21 **MR. PECKHAM:** That's right.

22 **THE COURT:** Okay. And that's what you wanted?

23 **MR. PECKHAM:** Well, any video that's there and we
24 assume it is on the hallways. We would not have expected that
25 videotape would have been on inmates on bunks in, you know, on

1 the toilet and that's not what we're looking for and I don't
2 think it exists or should exist. I am sure there are Federal
3 rulings from other places saying you can't do that.

4 But it's interesting, your Honor, and I can put these
5 before the Court. It's in the -- it's in -- attached to
6 Exhibit A, the letter -- may I, your Honor?

7 **THE COURT:** Uh-huh, sure.

8 **MR. PECKHAM:** That's the letter that was sent by
9 Mr. Hightower and I circled on the back on the next page --
10 typical legal-hold letter seeking videotapes. And if I may
11 also, your Honor, a year later, this is a letter from Harris
12 County to the Attorney General not saying no tapes ever existed
13 but any tapes that would have existed have been destroyed --

14 **THE COURT:** Okay. So your --

15 **MR. PECKHAM:** -- and so --

16 **THE COURT:** -- discovery request is for the chain of
17 custody if they're been destroyed, right?

18 **MR. PECKHAM:** That's right. We don't know -- we --

19 **MS. HULSEY:** No, that's --

20 **MR. PECKHAM:** -- well, it is now and if the tapes
21 don't exist --

22 **MS. HULSEY:** No.

23 **MR. PECKHAM:** If I may, your Honor? If the tapes
24 don't exist and they were destroyed, then certainly Harris
25 County knew we were seeking them. They attached that letter to

1 every response and objection to providing evidence so -- to the
2 Texas Attorney General. Over and over and over again they
3 would say, we're not going to produce it because there's a
4 threat of litigation. Here's the letter that says it. So they
5 know that letter exists. They knew it existed. They knew the
6 request for that information existed over and over and over
7 again. So it's a real predicament.

8 So we don't know, your Honor, if Harris County or the
9 Sheriff's Department and the Harris County Attorney's office
10 has destroyed those tapes or if Harris County Attorney's office
11 ever had them or if they were given to the Harris County
12 District Attorney's office or whether they were given to the
13 Department of Justice or what our steps if some goofball
14 detention officer has them saved on his laptop computer. But
15 we'll know that based upon a chain of custody as to where the
16 videos went and when they were destroyed, et cetera. So if
17 they're not going to provide us the videotapes and they say
18 they've been destroyed, how, when, what, where, et cetera?

19 **THE COURT:** So --

20 **MS. COUNTISS:** Part of the -- again, part of the
21 confusion is that the request he's discussing were public
22 information requests, not discovery requests to us in
23 litigation.

24 **THE COURT:** Okay. Make a discovery request or if you
25 agree to produce it in discovery without a request, I mean --

1 **MR. PECKHAM:** Okay. We will make that today.

2 **THE COURT:** -- one or the other.

3 **MS. COUNTISS:** And there is no dispute that the
4 letter -- we're not disputing that this -- that we received any
5 of these letters --

6 **THE COURT:** Okay.

7 **MS. COUNTISS:** -- and, you know, furthermore, there
8 are retention document -- retention policies that have been
9 produced or will be produced -- that have been produced that
10 will explain the chain -- what he's talking about as far as,
11 you know, how any video if it existed and would have been
12 relevant at all would have been on a deletion-overwrite
13 schedule.

14 **MR. PECKHAM:** And, of course, under the new rules, we
15 know that although relevance is always important, Judge, we're
16 dealing with proportionality and certainly we have a right to
17 know whether they existed and we have a right to look at them
18 and see whether there's relevant information on them.

19 **THE COURT:** I agree. Okay. I'll make an order and
20 give me the protective orders as you can and if you have to
21 make another discovery request, do it right away --

22 **MR. PECKHAM:** We'll do that today.

23 **THE COURT:** -- in regard to these chain of custody
24 matters unless you can negotiate an agreement. You know,
25 sometimes discovery is done that, too.

1 **MS. COUNTISS:** We did respond to one interrogatory
2 that addressed that area. So I'm not sure why that wasn't
3 satisfactory for them.

4 Do you have anything?

5 **MR. PECKHAM:** I'm having people whisper.

6 The request I think we would have, we sent out the
7 interrogatory for a chain of custody if we can get somewhat an
8 expedited response. They've had close to two years now with
9 this information. There have been multiple, multiple requests
10 for --

11 **THE COURT:** I think they've tried to explain it here
12 in court. I don't think they have a problem explaining the
13 chain of custody and answering your, you know, new
14 interrogatory. So, I mean, I don't imagine it would take more
15 than 20 days or so.

16 What do you think?

17 **MS. HULSEY:** Well, we have to --

18 **MS. COUNTISS:** It depends what it says.

19 **MS. HULSEY:** -- we have to find out who would have
20 the information and that sort of thing but we'd like our
21 regular time --

22 **THE COURT:** Which is how much?

23 **MS. HULSEY:** Thirty days.

24 **THE COURT:** Okay. Can you do it in 20 days?

25 **MS. COUNTISS:** If you prefer, sure.

1 **THE COURT:** They have a statute of limitations, you
2 know, kind of looming --

3 **MS. COUNTISS:** Sure.

4 **THE COURT:** -- and that's why I'm asking for you to
5 answer that interrogatory about the chain of custody, if the
6 videotapes that they haven't propounded yet but they're going
7 to craft one for you.

8 **MR. PECKHAM:** Good enough.

9 **MS. COUNTISS:** Go ahead.

10 **THE COURT:** Can you answer it in 20 days?

11 **MS. HULSEY:** We'll do our best.

12 **MS. COUNTISS:** Yes.

13 **THE COURT:** Thank you. All right.

14 **MR. PECKHAM:** Thank you, your Honor.

15 **MR. KALLINEN:** Jail inspection.

16 **THE COURT:** Anything else?

17 **MR. PECKHAM:** Oh, jail inspection.

18 **THE COURT:** A jail inspection, you -- I thought you
19 were negotiating that.

20 **MS. COUNTISS:** No. Your Honor, there's --

21 **THE COURT:** Okay.

22 **MS. COUNTISS:** -- nothing about them coming into the
23 jail with two or three, as they've told us, unidentified
24 experts videoing and taking pictures and taking measurements
25 that can't -- number one, can't be obtained in many other

1 possible ways.

2 **THE COURT:** Like what?

3 **MS. COUNTISS:** Like in discovery requests asking for
4 measure -- they're talking about doing measurements of hallways
5 and measurements of distances from the cell to the -- to where
6 some of the guards might have been.

7 **THE COURT:** What request is it? Did you make a
8 specific discovery request for an inspection?

9 **MS. COUNTISS:** No.

10 **MR. PECKHAM:** Judge, and --

11 **MS. COUNTISS:** Oh, for the inspection, yes.

12 **MR. PECKHAM:** I think it was -- I want to say Number
13 1. Yes, it was Number 1.

14 **THE COURT:** Number 1 of what?

15 **MR. PECKHAM:** Oh, sorry, the --

16 **MR. KALLINEN:** Request --

17 **MR. PECKHAM:** Yeah, request --

18 **MS. COUNTISS:** It's inspection and request for
19 production.

20 **MR. PECKHAM:** That's correct.

21 **THE COURT:** Inspection and request for production?

22 **MR. PECKHAM:** That's correct. It's Request for
23 Production Number 1 but it was titled, "Request for Inspection
24 1."

25 **MS. COUNTISS:** Yeah.

1 **MS. HULSEY:** And we responded at Document Number 25
2 at Electronic Pages 26 through 33.

3 **MR. PECKHAM:** And, your Honor, I've never seen an
4 expert who can get -- who is not going to be cross examined
5 over -- ah, he never went to the jail, did you? You can't --
6 you don't know this for a fact, do you? You never saw that?

7 And clearly, those lines of sight are going to be
8 extremely important and I appreciate Harris County's offer to
9 do all the measurements for us but there is no substitute for
10 an expert going in and saying, oh, well, I see this. That
11 brings up another line of sight we didn't look at.

12 **THE COURT:** Did you identify the expert?

13 **MR. PECKHAM:** We have not and we will certainly as
14 part of the protocol.

15 **MS. COUNTISS:** Your Honor, they also are asking to
16 take pictures and unspecified videos and they indicated it has
17 to do with showing conditions in the jail which obviously are
18 not going to be the same now as they were in March of 2015, for
19 one and for another, if sight lines -- I mean, sight lines is
20 what they're most concerned about. It -- I don't -- it's hard
21 to see how that requires entering a secured premises full of
22 inmates to find out whether the guards that have been
23 identified in disclosures -- what they saw or whether they saw
24 anything or what the -- you know, what they observed just
25 because there's a distance between a window and a cell which

1 could be given to them doesn't -- I mean, I don't see -- I
2 don't even remotely see how that outweighs the burden on what
3 -- you know, all these folks coming in and --

4 **THE COURT:** The problem is that they're required to
5 take your word for anything, you know. You have your version
6 of the facts and they have theirs. So --

7 **MS. COUNTISS:** So -- but -- so what happens when they
8 get in there?

9 **THE COURT:** I think that they should be allowed to
10 inspect it. You know, if you want control over that, then
11 negotiate a protocol. I'll give you some time to do that and
12 then I'll enter an order. So you can negotiate a protocol.
13 You need to identify who's going in there though.

14 **MR. PECKHAM:** Will do.

15 **THE COURT:** And today's the 10th. Okay, I would
16 think it ought to be done by the end of this month, the
17 inspection, you know -- or maybe that's pushing it a little bit
18 but at least the protocol. You should negotiate that by the
19 27th and then, you know, I'll step in if I need to.

20 **MR. PECKHAM:** That makes sense for us, your Honor. I
21 mean, obviously if -- you know, if an hour is in dispute or two
22 hours are in dispute or if it's a Sunday morning when there's
23 low -- well, I guess that would be high -- that a -- you know,
24 we'll certainly --

25 **THE COURT:** Well, work out as much as you can.

1 All right. Good luck with your case.

2 MR. PECKHAM: Thank you, your Honor.

3 MR. KALLINEN: Thank you, your Honor.

4 THE COURT: You're excused.

5 (This proceeding adjourned at 11:21 a.m.)

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in cursive script, appearing to read "Toni Hudson", is positioned above a horizontal line.

January 13, 2017

TONI HUDSON, TRANSCRIBER